

BEFORE THE ADMINISTRATIVE LAW JUDGE
OKLAHOMA ALCOHOLIC BEVERAGE LAWS ENFORCEMENT COMMISSION
OF THE STATE OF OKLAHOMA

SOONER FINE WINE & SPIRITS LLP
2150 South I-35 Service Road
Moore, Oklahoma 73160

Petitioner,

vs.

OKLAHOMA ABLE COMMISSION
50 NE 23rd Street
Oklahoma City, Oklahoma 73105

Respondent.

RETA-24-000021

FILED

JUL 25 2024

ALCOHOLIC BEVERAGE
LAWS ENFORCEMENT COMMISSION

RECOMMENDATION OF THE DIRECTOR

The Alcoholic Beverage Laws Enforcement Commission (hereinafter "ABLE"), pursuant to the Administrative Procedures Act, 75 O.S., §§ 250 *et seq.*, per Oklahoma Administrative Code 45:1-5-1 and 45: 50-11-1, as well as the provisions of 37A O.S. §§ 1-107, 2-149, 2-150, and 2-151, does hereby enter this Final Order of Denial in the above cause:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. That on April 29, 2024, Petitioner's application for a Retail Spirits License was denied pursuant to 37A O.S. § 2-149.
2. That on May 3, 2024, Petitioner requested a hearing to appeal the denial of its application.
3. That on July 10, 2024, a hearing was held in ABLE's administrative court in regard to the above-mentioned letter of denial.
4. That on July 22, 2024, the Administrative Law Judge filed his Hearing Officer's Report to Director of Findings of Fact, Conclusions of Law, and Recommendation of Final Order. (Copy attached as Exhibit "A".)
5. That the Hearing Officer's Report to Director of Findings of Fact, Conclusions of Law, and Recommendation of Final Order (attached as Exhibit "A") are adopted in their entirety and wholly incorporated in this Final Order of Denial by reference.
6. That ABLE has the authority to promulgate rules and issue and deny licenses pursuant to 37A O.S. § 1-106 and § 1-107.

ORDER AFFIRMING DENIAL

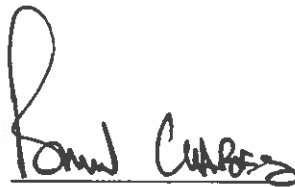
Executive Director Brandon Clabes hereby affirms denial of Petitioner's application for a Retail Spirits License in accordance with Oklahoma Administrative Code 45:1-5-1 and 45:50-11-1, and pursuant to the Oklahoma Constitution 28A O.S. § 4(A) and 37A O.S. §2-156(A).



NOTICE

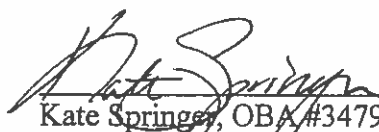
I, Brandon Clabes, Executive Director of the Alcoholic Beverage Laws Enforcement Commission of Oklahoma, certify that I have read the record of proceedings in this matter and that I concur with the findings of facts and conclusions of law. This shall constitute the Final Order of this agency in this matter.

Dated this 25 day of July 2024.



Brandon Clabes
Executive Director

Dated this 25 day of July 2024



Kate Springer, OBA #34794
Prosecuting Attorney
Oklahoma Alcoholic Beverage Laws
Enforcement Commission
405-522-2997
Kate.springer@able.ok.gov

NOTIFICATION OF APPEAL RIGHTS

You are hereby notified that any determination in an individual proceeding shall be subject to rehearing, reopening, or reconsideration by the agency within fifteen (15) days of its entry pursuant to 75 O.S. § 317 and 37A O.S. § 2-151. If an application for rehearing is not filed, you are entitled to judicial review by filing a petition for review in the District Court within thirty (30) days after you are notified of this determination, 75 O.S. § 318 and 37A O.S. § 2-152. Copies of such petition shall be served upon this agency within ten (10) days after filing such petition.

CERTIFICATE OF DELIVERY

On July 25~~th~~, 2024, I delivered; mailed, postage prepaid by First Class U.S. Mail; and/or e-mailed a true and correct copy of the foregoing instrument to the following:

Ellen Spiropoulos
ekspiropoulos@phillipsmurrah.com

Mark Hornbeek
mehornbeek@phillipsmurrah.com

Mike Fields
mike@glenncoffee.com

Kimberly Yates
Kimberly Yates

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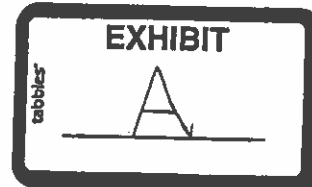
ALCOHOLIC BEVERAGE
LAWS ENFORCEMENT COMMISSION

HEARING OFFICER'S REPORT TO DIRECTOR OF FINDINGS
OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION
OF FINAL ORDER

This matter comes before the Undersigned based upon the appeal of the Alcoholic Beverage Laws Enforcement Commission's ("Respondent"; "ABLE"; "Commission") denial of Sooner Fine & Spirits, LLP's ("Petitioner"; "Sooner"; "Total Wine") Retail Spirits Store Application in the above captioned matter. ABLE Director Brandon Clabes appointed the Undersigned to serve as Administrative Law Judge ("ALJ") to conduct an administrative hearing and make a report of findings of fact, conclusions of law and recommendation of final order pursuant to OKLA. ADMIN. CODE § 45:50-11-1. For the reasons set forth below and based upon the Undersigned's proposed findings of fact and conclusions of law, the Undersigned respectfully recommends that Petitioner's Retail Spirits Store Application be **DENIED**.

SUMMARY OF THE PROCEEDING

Respondent formally denied Petitioner's Retail Spirits Store Application on April 29, 2024. Petitioner timely submitted a request for an administrative hearing on May 3, 2024. The administrative hearing was set for May 17, 2024. At that time, the parties agreed to continue the



hearing to July 10, 2024. The parties also agreed to a status conference on June 3, 2024. On that date, the parties agreed to a scheduling order for discovery, witness & exhibit lists, and briefs. The parties then engaged in extensive prehearing litigation.

The Undersigned ALJ¹ conducted an administrative hearing in this matter on Wednesday, July 10, 2024, from approximately 9:00 AM to 3:30 PM. Petitioner appeared by and through counsel Mark Hornbeek, Ellen Spiropolous, Jonna Vanderslice, and Robert Shaffer. Respondent appeared by and through counsel Kate Springer, Lori Carter, Leif Arvidson, and ABLE Director Brandon Clabes.

The proceeding was brought under the provisions of the Oklahoma Administrative Procedures Act, 75 O.S. 2011, §§ 250 *et seq.*, per OKLA. ADMIN. CODE Title 45:50-11-1 as well as the provisions of 37A O.S. §§ 1-107, 2-149, 2-150, and 2-151. The depositions admitted at the hearing were taken under oath. The hearing was electronically recorded via digital audio recorder and a transcript was made by Court Reporter Jeanna Whitten. A permanent record will be kept.

THE RECORD

Petitioner

Petitioner presented no witnesses. Petitioner admitted twenty-three (23) exhibits into the record. Five (5) of these exhibits were deposition transcripts.

Respondent

Respondent presented no witnesses. Respondent admitted four (4) exhibits.

Exhibits for both Petitioner and Respondent are identified below:

<u>Exhibit No.</u>	<u>Description</u>
1 ²³⁴	Sooner Fine Wine & Spirits' Retail Spirits Store Application.
1.1	Email string from Ellen Spiropolous to Carla Clanton dated January 5, 2024.
1.2	Email from Alan Davis to Carla Clanton dated February 22, 2024.
1.3	Copies of five (5) current Retail Spirits Store License holders that are Limited Liability Partnerships.
1.4	Copies of four (4) current Retail Spirits Store License holders that are Limited Partnerships.
1.5	Copies of thirteen (13) current Wine Spirits Wholesaler License holders that are

¹ ALJ Michael J. Fields is a licensed attorney in Oklahoma, OBA #16920.

² This exhibit was also admitted by Respondent as Respondent's #1.

³ Respondent's #2 was an excerpt from Petitioner's #1/Respondent's #1.

⁴ Respondent's #3 was an excerpt from Petitioner's #1/Respondent's #1.

- Limited Liability Companies, Limited Liability Limited Partnerships, Limited Liability Partnerships, or Limited Partnerships.
- 1.6 Email string from Robert Jernigan to Brandon Clabes dated February 27, 2024.
 - 1.7 Email string from Steven Lanier to Lori Carter dated April 1, 2024.
 - 1.8 Multiple Microsoft Teams meeting invitations dated March 8, 2024, through April 9, 2024.
 - 1.9 Email string from ABLE Commission to <legal@totalwine.com> dated April 10, 2024.
 - 1.10 Email string from Robert Jernigan to Brandon Clabes, Lori Carter, et al. dated February 27, 2024.
 - 1.11 Email string from Ellen Spiropolous to Carla Clanton dated January 5, 2024.
 - 6.1 Amended Certificate of Limited Liability Partnership and Certificate of Good Standing of Domestic Limited Liability Partnership for Sooner Fine Wine & Spirits, LLP, both dated January 2024.
 - 6.2 Receipt for Retail Spirits Store Application for Sooner Fine Wine & Spirits, LLP dated February 26, 2024.
 - 7 Screenshot of ABLE Accela online portal computer system.
 - 8.1⁵ Letter from Carla Clanton to Ellen Spiropolous dated April 29, 2024, denying Retail Spirits Store Application license.
 - 8.2 Letter from Ellen Spiropolous to Director Brandon Clabes dated May 3, 2024, requesting a hearing after denial of its application.
 - 9 Email from Robert Jernigan to Robert Jernigan dated March 26, 2024.
 - 16 Transcript of Carla Clanton deposition taken June 25, 2024.
 - 17 Transcript of Brandon Clabes deposition taken June 27, 2024.
 - 18 Transcript of Steven Lanier deposition taken June 25, 2024.
 - 19 Transcript of Robert Jernigan deposition taken July 1, 2024.
 - 20 Transcript of Cody Rekstad deposition taken June 27, 2024.

FINDINGS OF FACT

1. Petitioner is a domestic limited liability partnership ("LLP") organized under the laws of the State of Oklahoma and registered with the Oklahoma Secretary of State. Ex. 6.1; 1.
2. Respondent is Oklahoma Alcoholic Beverage Laws Enforcement Commission, a licensing and regulatory agency of the State of Oklahoma. OKLA. CONST. ART. 26, § 1; 37A O.S. § 1-104.
3. On January 8, 2024, Petitioner contacted the ABLE Commission via email to inquire whether an LLP may hold a retail spirits license. Ex. 1.1.
4. On January 9, 2024, ABLE confirmed to Petitioner that a retail spirits license, as well as a wine and spirits wholesaler license, may be issued to a limited partnership ("LP"), LLP, or limited liability limited partnership ("LLLP"). Ex. 1.1.
5. On February 26, 2024, Petitioner submitted an application for a retail spirits license. Ex. 1.

⁵ This exhibit was also admitted by Respondent as Respondent's #4.

6. On February 28, 2024, Robert Jernigan, President of the Retail Liquor Association of Oklahoma, sent an email to ABLE's Executive Director Clabes and Deputy Director Carter requesting they deny the Petitioner's Application. Ex. 1.6.
7. On February 28, 2024, ABLE's Deputy General Counsel, Leif Arvidson, confirmed in an internal email that ABLE intended to enforce Oklahoma's residency requirements. Ex. 1.10.
8. On March 26, 2024, Jernigan sent an email to the members of the Retail Liquor Association of Oklahoma asking them to complain to the ABLE Commission about "out of state companies that are harming our business, revenue, and reputation." Ex. 9.
9. It was common for Jernigan to contact ABLE on various topics for various reasons. Ex. 17 [67:7-13; 35:19-22] (Clabes)⁶
10. It was common for ABLE license holders to contact ABLE to complain about other ABLE license holders for various reasons. Ex. 18 [60:25; 61:1-8] (Lanier)
11. On March 29, 2024, in the ABLE Accela online portal computer system, Petitioner's application was marked as "passed" by Steve Lanier after passing inspection. Ex. 7.
12. On April 1, 2024, in the ABLE Accela online portal computer system, Petitioner's application was marked as approved by Cody Rekstad, but nine (9) days later Rekstad marked the application as denied. Ex. 7.
13. On April 10, 2024, in the ABLE Accela online portal computer system, Petitioner's application was marked as denied by Cody Rekstad with the following comment noted: "Recommend license denial due to residency." Ex. 16 [72:10 – 15] (Clanton).
14. On April 10, 2024, Petitioner received an email from ABLE informing them that its application was denied due to Oklahoma's Constitutional residency requirements. Ex. 1.9.
15. This email from ABLE was made in error and was not a final agency action. Ex. 16 [84:16 – 22; 85: 1 -25; 86:1-9] (Clanton).
16. On April 18, 2024, in the ABLE Accela online portal computer system, Petitioner's application was marked as denied by Steve Lanier because "the owners do not have a residence in Oklahoma." Ex. 16 [71:20 – 25; 72: 1 -9] (Clanton).
17. Historically, ABLE enforced the residency requirement. In the last 35 years, it has been ABLE's practice to deny licenses based upon residency. Ex. 17 [12:8-21; 45:1-14] (Clanton).

⁶ References to the deposition transcripts are referred to as "Ex. x [page xx: line xx-xx] (witness last name)".

18. ABLE's current policy is to deny out of state applicants who do not meet the residency requirements. Director Clabes believes Total Wine's application should be denied if residency was the only issue. **Ex. 16 [75: 1; 56:10-24] (Clabes).**
19. On April 29, 2024, Petitioner's application was formally denied via letter from ABLE's Carla Clanton to Petitioner's attorney, Ellen Spiropolous. This letter indicated the formal denial was made in accordance with 37A O.S. § 2-149. The stated reason for the denial was Petitioner was making application as an impermissible business entity—a limited liability partnership. **Ex. 8.1; Ex. 16 [86:3-9; 90:14] (Clanton).**
20. Petitioner's application was not denied based upon residency. **Ex. 16 [89:7-23; 91:8-22] (Clanton).**
21. On May 3, 2024, Petitioner provided ABLE with formal notice of its request to appeal the denial of its application. **Ex. 8.2.**
22. A hearing was set for May 17, 2024, and continued to July 10, 2024, with the consent of the parties and ALJ.
23. For the last 35 years, and up until recently, ABLE has routinely issued retailer and wholesaler licenses to LLPs and LLLPs. **Ex. 16 [51:1-5] (Clanton); Ex. 17 [30:18-22] (Clabes).**
24. Counsel for Petitioner, Ellen Spiropolous, emailed Clanton on January 8, 2024, and asked if LLPs could hold a retail spirits license and Clanton responded that LPs, LLPs, and LLLPs could hold a retail spirits licenses, but limited liability companies ("LLC") and corporations could not. **Ex. 16 [54:3-23] (Clanton).**
25. The conversation within ABLE about whether an LLP could hold a retail spirits license began in the spring of 2024 after Ellen Spiropolous contacted ABLE. **Ex. 17 [22:18-25; 23:1-4] (Clabes).**
26. Director Clabes was not usually involved in specific licensing decisions (he does not have anything to do with "99.9% of licensing decisions"). However, he became involved in the licensing decision for Total Wine because of discussions between Spiropolous and Carter that Carter brought to his attention. After Carter brought it to his attention, he then had numerous discussions about the issue and was involved in several email chains in which the business entity designations were discussed. Total Wine's application was ultimately brought to him for the final decision. **Ex. 17 [18:7-18] (Clabes).**

27. ABLE issued and/or renewed at least five (5) licenses to LLPs and four (4) licenses to LPs between March 2022 and April 2024. Ex. 1.3; Ex. 1.4.
28. ABLE issued and/or renewed wine and spirits wholesaler's licenses to at least three (3) LPs, six (6) LLPs, three (3) LLLPs, and one (1) LLC between March 2022 and April 2024. Ex. 1.5.
29. ABLE hired a new Executive Director in 2022 (Clabes) and a new Assistant Executive Director and General Counsel in 2023. At the time the new director was hired, the agency was in disarray, and the director has been building his team for the last two (2) years trying to "right the ship" and "rebrand" ABLE. Ex. 17 [24:9-12; 60:4-15] (Clabes).
30. Director Clabes was made aware that ABLE granted retail spirits licenses to other LLPs in the past: "We did. I wish we hadn't have because I don't think we legally should have, but they were issued." Ex. 17 [24:12-15; 32:3-6] (Clabes).
31. These licenses were granted without Clabes's knowledge (at the time they were granted). Ex. 17 [90:12-16] (Clabes).
32. The administration previous to Clabes's tenure failed to train and educate ABLE licensing staff on changes in the law. Ex. 17 [91:2-7] (Clabes).
33. After receiving Petitioner's application and the ensuing deliberations that included the ABLE director, Deputy Director/General Counsel, Deputy General Counsel, and the Oklahoma Attorney General's Office, ABLE changed its policy of allowing LPs and LLPs to hold Licenses. Ex. 16 [139:13-18] (Clanton); Ex 17 [31:4-25; 32:1-3; 33:21-24] (Clabes).
34. Petitioner's application for a retail spirits license and related inquiries made ABLE aware that LLPs had been unlawfully granted licenses in the past. If Petitioner had not brought the issue to the attention of ABLE's top administration, the policy probably would not have changed. Ex. 17 [34:11-25; 35:2-15] (Clabes).
35. Since the recent change in policy, ABLE has been trying to correct the licenses that it now believes were issued contrary to the law ("two wrongs don't make a right"). Ex. 17 [3:3-13] (Clabes).
36. Since the policy change, ABLE has developed a plan as to how to address previous applicants that were granted licenses which now contradict ABLE's current policy. This will be done when the licenses are renewed or ABLE will give them notice and time to change their business

- models. ABLE has been suggesting that LLPs re-apply as a different business entity. **Ex. 17 [95:4-9; 32:13-18] (Clabes).**
37. The decision to deny Petitioner's application was the sole decision of Director Clabes based upon the advice he received from ABLE's legal counsel and the Oklahoma Attorney General's Office. No one's opinion or advocacy outside ABLE and the Oklahoma Attorney General's Office played a role in or influenced Director Clabes's decision to deny Petitioner's application. **Ex. 17 [23: 6-8] (Clabes).**
38. Director Clabes believed that granting Petitioner's application for a retail spirits license would violate "the Oklahoma Constitution and statute under 37A," and ABLE's Deputy Director/General Counsel shared this opinion. **Ex. 17 [20:20-23; 21:13-16] (Clabes).**
39. For purposes of 12 O.S. § 2502, the communications regarding Petitioner's application between ABLE's legal team, Director, and employees all occurred while there was a pending action at the agency—Petitioner's application for retail spirits license. **12 O.S. § 2502; Hearing Transcript [147:14-25; 148:1-6].**
40. For purposes of 12 O.S. § 2502, ABLE's position and/or belief that a denial of the Petitioner's application would almost certainly result in at least an agency appeal of the decision, if not state court litigation, was a reasonable position and/or belief given the attention that Petitioner and its application received. **12 O.S. § 2502; Hearing Transcript [148:7-17].**
41. Attorneys must have the ability to have privileged conversations with their clients when litigation appears imminent or even just likely. **12 O.S. § 2502; Hearing Transcript [148: 18-24].**
42. Disclosure of the documents listed on ABLE's privilege log will seriously impair ABLE's ability to process the claim or to conduct litigation including this action. **12 O.S. § 2502; Hearing Transcript [149:2-15].**
43. The communications of General Counsel Lori Carter with the legal team and ABLE's employees related to Petitioner's application and the accompanying legal issues are protected under 12 O.S. § 2502. **12 O.S. § 2502; Hearing Transcript [149: 16-22].**
44. Any conclusion of law below which is more appropriately characterized as a finding of fact is hereby incorporated as such.

CONCLUSIONS OF LAW

1. Chapters 1 & 50 of Title 45 of the Oklahoma Administrative Code apply to and control this

proceeding. OKLA. ADMIN. CODE §§ 45:1-5-1; 45:50-11-1.

2. The undersigned ALJ has jurisdiction to conduct an administrative hearing and provide proposed findings of fact and conclusions of law to the Director of the ABLE Commission as set forth in OKLA. ADMIN. CODE § 45:50-11-1. OKLA. ADMIN. CODE § 45:50-11-1.
3. Under 37A O.S. § 2-152, Respondent must prove by a preponderance of the evidence that in denying Petitioner's license, it acted with legal cause or upon sufficient evidence. 37A O.S. § 2-152.
4. Section 1 of Article 28 of the Oklahoma Constitution created the Alcoholic Beverage Laws Enforcement Commission. The purpose of the Commission is to enforce the alcoholic beverage laws of the state, and the Commission has such power and authority to enforce such laws, rules and regulations as shall be prescribed by Oklahoma law. OKLA. CONST. ART. 26, § 1; 37A O.S. § 1-104.
5. The Oklahoma Alcoholic Beverage Control Act shall be deemed an exercise of the police power of the State of Oklahoma for the protection of the welfare, health, peace, temperance and safety of the people of this state, and all provisions of the Act shall be construed for the accomplishment of that purpose. 37A O.S. § 1-106.
6. The ABLE Commission has the following powers and duties (among others):
 - a. To supervise, inspect and regulate every phase of the business of manufacturing, importing, exporting, transporting, storing, selling, distributing and possessing for the purpose of sale, all alcoholic beverages which shall be necessary and proper to carry out the purposes of the Oklahoma Alcoholic Beverage Control Act;
 - b. To promulgate rules, in the manner herein provided, to carry out the purposes of the Oklahoma Alcoholic Beverage Control Act;
 - c. To have the sole authority to issue any license provided for in the Oklahoma Alcoholic Beverage Control Act and except as provided in Sections 101 and 102 of this act with respect to cities, towns and counties, and except as may be provided under Title 68 of the Oklahoma Statutes with respect to the Oklahoma Tax Commission, no other agency, instrumentality or political subdivision of this state shall be authorized to issue any license or permit allowing any licensee to engage in any activity covered by the Oklahoma Alcoholic Beverage Control Act anywhere within the State of Oklahoma;
 - d. To refuse to issue any license provided for in the Oklahoma Alcoholic Beverage

- Control Act for cause provided for in the Oklahoma Alcoholic Beverage Control Act;
- e. To exercise all other powers and duties conferred by the Oklahoma Alcoholic Beverage Control Act, and all powers incidental, convenient or necessary to enable it to administer or carry out any of the provisions of the Oklahoma Alcoholic Beverage Control Act. 37A O.S. § 1-107.
7. OKLA. ADMIN. CODE § 45:50-11-1 provides that an ALJ “shall issue a report to the Director and the report shall include findings of fact and conclusions of law.” OKLA. ADMIN. CODE § 45:50-11-1.
8. The ABLE Director is tasked with issuing a recommendation to the Commission to deny or grant an applicant’s license request. If the licensee or other person disagrees with the recommendation, they may request a hearing before the Commission for a review of the record. Any person aggrieved by a final order of the Commission may seek judicial review as prescribed by the Oklahoma Administrative Procedures Act. OKLA. ADMIN. CODE § 45:50-11-1.
9. The Oklahoma Constitution limits the types of business entities that may be granted a retail spirits license to either a sole proprietorship or a partnership. OKLA. CONST. ART. 28A, § 4(A).
10. The Oklahoma Constitution prohibits retail spirits licenses from being issued to a “...corporation, limited liability company or *similar business entity*...” (emphasis added) OKLA. CONST. ART. 28A, § 4(A).
11. This Constitutional prohibition was codified at 37A O.S. § 2-156(a). 37A O.S. § 2-156(a).
12. Under the *noscitur a sociis* doctrine of statutory construction recognized by the Oklahoma Supreme Court in both *Application of Central Airlines*, 1947 OK 312; and *Sullins v. Am. Med. Response of Oklahoma, Inc.* 2001 OK 20, the meaning of an unclear or ambiguous word should be determined by considering the words with which it is associated in the context. *Application of Central Airlines*, 1947 OK 312, ¶ 0, 185 P.2d 919, 920; and *Sullins v. Am. Med. Response of Oklahoma, Inc.* 2001 OK 20, ¶ 19, 23 P.3d 259, 263.
13. “Sole proprietorship” and “partnership” are associated with each other in the context of business entities which may be granted a retail spirits license. “Corporation, limited liability company or similar business entity” are associated with one another in the context of those business entities which are prohibited from being granted retail spirits licenses. OKLA. CONST.

ART. 28A, § 4(A).

14. ABLE's interpretation of OKLA. CONST. ART. 28A, § 4(A) that sole proprietorships and partnerships are allowed to hold retail spirits licenses because they each similarly do not limit the liability of owners/principles is a reasonable interpretation of this provision of the Oklahoma Constitution and it has a reasonable basis in law.⁷ OKLA. CONST. ART. 28A, § 4(A); 54 O.S. § 1-306.
15. ABLE's conclusion that a limited liability partnership (LLP) falls within the OKLA. CONST. ART. 28A, § 4(A) provision that prohibits "similar business entities" from holding a retail spirits licenses is a reasonable interpretation of this provision and it has a reasonable basis in law because an LLP, like a corporation and an LLC, limit liability in a similar manner. OKLA. CONST. ART. 28A, § 4(A); 54 O.S. § 1-306.
16. ABLE's interpretation of this Constitutional provision is also consistent with its exercise of the police power of the State of Oklahoma for the protection of the welfare, health, peace, temperance and safety of the people of this state. It is also consistent with ABLE's mandate to construe the provisions of the Oklahoma Alcoholic Beverage Control Act for the accomplishment of that purpose. 37A O.S. § 1-106.
17. Limited Liability Partnerships and Limited Liability Companies are "similar business entities" because both shield liability in similar ways. Thus, limited liability partnerships are prohibited from holding a retail spirits license under Oklahoma law. OKLA. CONST. ART. 28A, § 4(A); 54 O.S. § 1-306(c); 37A O.S. § 2-156(a).
18. Petitioner is a limited liability partnership organized under the laws of the State of Oklahoma and registered with the Oklahoma Secretary of State. Thus, Petitioner is prohibited from being issued a retail spirits license under Oklahoma law. Exhibits 6.1; 6.2; OKLA. CONST. ART. 28A, § 4(A); 37A O.S. § 2-156(a).
19. ABLE's action to deny Petitioner's application was reasonable and reasonably explained. ABLE offered a satisfactory explanation for its action including a rational connection between the facts found (that an LLP is prohibited by Oklahoma's Constitution from holding a retail spirits license) and the choice it made (deny said application). *Ohio v. Environmental Protection Agency*, 144 S.Ct. 2040, 2053 (2024); *Montes v. Oklahoma Department of*

⁷ Interpreting "partnership" broadly as Petitioner urges, could conceivably include every Oklahoma entity that is comprised of more than one partner/principle. Certainly, this is not the intent of OKLA. CONST. ART. 28A, § 4(A).

Human Services, 2019 OK CIV APP 42, ¶ 18, 445 P.3d 345, 250.

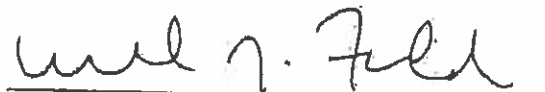
20. ABLE articulated a rational connection between the facts it faced and the decision it made. *Am. Petroleum Inst. v. U.S. Dep't of Interior*, 81 F.4th 1048, 1058 (10th Cir. 2023).
21. ABLE's actions fell within a zone of reasonableness. *Biden v. Missouri*, 142 S.Ct. 647, 654 (2022).
22. Even though ABLE's order denying Petitioner's application was inconsistent with its past practice, the agency adequately explained the reasons for its reversal of policy. *WildEarth Guardians v. EPA*, 770 F.3d 919, 941 (10th Cir. 2014).
23. ABLE acted with legal cause and/or with sufficient evidence when it denied Petitioner's application for a retail spirits license due to its status as a limited liability partnership.
24. Any finding of fact above that is more appropriately characterized as a conclusion of law is hereby incorporated as such.

ORDER

It is the recommendation of the undersigned ALJ that Petitioner's application for a retail spirits license be **DENIED**.

IT IS SO ORDERED.

Issued this 22nd day of July 2024



MICHAEL J. FIELDS
Administrative Law Judge

NOTICE OF RIGHT TO APPEAL

Any party aggrieved by a final order of the Commission may seek judicial review as prescribed by the Administrative Procedures Act, 75 O.S. § 250 *et seq.* and OKLA. ADMIN. CODE § 45:50-11-1.